**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | CC Docket No. 96-45 |
| Federal-State Joint Board | ) | FCC 03J-1 |
| On Universal Service | ) | |

COMMENTS OF THE
IDAHO TELEPHONE ASSOCIATION

## I. Introduction

The Idaho Telephone Association ("ITA") by counsel, respectfully submits its Comments in the above captioned proceeding whereby the Federal–State Joint Board on Universal Service seeks comment on certain of the Commission's rules relating to high–cost universal service support and the ETC designation process. [1]

ITA is a state telephone association and its members include both commercial companies and cooperatives. [2] The fourteen ITA member companies provide basic and advancing telecommunications services in rural Idaho. All of ITA's members are rural telephone companies as defined in 47 U.S.C. § 153(37).

Through these Comments, ITA provides facts, data, and views to assist the Joint Board in developing constructive and meaningful recommendations that will ensure the continued stability, sufficiency and predictability of the universal service fund mechanisms.[3]

---

[1] *Public Notice*, CC Docket No. 96-45, FCC 03J-1, Released February 7, 2003 (*Notice).*
[2]ITA member companies submitting these collective comments include: Albion Telephone Company, Cambridge Telephone Company, Custer Telephone Cooperative, Inc., Farmers Mutual Telephone Company, Filer Mutual Telephone Company, Inland Telephone Company, Midvale Telephone Company, Mud Lake Telephone Cooperative Association, Project Mutual Telephone Cooperative Association, Direct Communications – Rockland, Rural Telephone Company, Silver Star Telephone Company, Oregon-Idaho Utilities, and Fremont Telecom.
[3] 47 U.S.C. § 254(b)

## II. State of the Marketplace and Universal Service Fund

The Joint Board's Public Notice requests detailed data on competition and line growth in high cost areas and observes that the more detailed data it receives, the better positioned the Joint Board will be to develop recommendations to perpetuate the Act's goals of maintaining universal service and fostering competition. [4] In responding to this request, ITA surveyed its members to compile as much meaningful and useful information as possible within the compressed timeframe allowed for these comments. Of the 15 study areas represented by ITA's 14 member companies, ITA collected information on 12 study areas. This response accounts for approximately 98 percent of the ITA's membership's total access lines.[5] The data presented in these comments is based on this survey.

No competitive local exchange carriers (CLECs) currently offer service in ITA member company serving areas. This is not surprising given the relatively low density demographics, high-cost infrastructure investment, and substantial operating expenses associated with serving these rural areas. On average, the ITA companies have only 2 access lines per square mile of service territory. This is in contrast to the findings of the Rural Task Force, which determined that, on average, rural carriers serve 19 lines per square mile.[6] Four of the ITA study areas have a line density per square mile of less than 1 and three study areas have a density of between 1 and 2 lines per square mile. On the other end of the spectrum, one member with a comparatively small service territory has more than 100 access lines per square mile.

---

[4] *Notice* at para. 9.

[5] Three member companies with combined access lines of approximately 1,000 were unable to respond to the data request in the time allowed for the comments.

The lack of access line density and ubiquity of coverage in these rural areas translates into high costs. At the end of 2002, the gross investment in telephone plant in service per access line for the ITA members was approximately $5,400. Plant Specific Operating Expenses were $445 per line for this same period, or $37 per line per month.

Because of this cost structure, it is vital to rural customers in Idaho that specific, predictable, and sufficient federal universal service funding be maintained so that these customers continue to enjoy the same level of service at comparable rates to those services received by urban customers. In light of these demographics and resulting costs to serve, it is not surprising that these rural markets have yet to attract any CLECs.

The Joint Board cites the Commission's most recent CMRS Competition report, which found that 94 percent of the total United States population lives in counties with three or more mobile telephone service operators and asks what percentage of rural customers have access to mobile services.[7] ITA members' customers generally have a wide choice of wireless providers. There are an average of 5 wireless carriers serving these study areas. Four study areas reported between 1 to 3 wireless providers, four additional study areas stated that there were 4 to 6 providers, and the remaining four study areas identified between 7 to 10 wireless carrier alternatives. In many cases, these CMRS providers have been offering mobile service for 5 to 10 years. Even more significantly, these carriers have been offering their services since inception without high-cost support.

---

[6] Rural Task Force, White Paper 2, *The Rural Difference*, January 2000, page 33.
[7] *Notice* at para. 12.

The Joint Boards asks to what extent support for competitive ETCs will grow over time.[8] The historic growth in the universal service fund is well documented in OPASTCO's recently released White Paper titled *Universal Service in Rural America: A Congressional Mandate at Risk.*[9] Without the Commission's adoption of appropriate Joint Board recommendations and absent prudent state commission decisions with respect to eligibility, ITA believes pressure on the fund will continue to grow at an exponential rate, thereby jeopardizing the future sustainability of the fund. To the extent funding support is curtailed, this will have a chilling effect on investment in rural telecommunications infrastructure.

Idaho exemplifies the increasing activity of wireless providers seeking competitive ETC status and, in turn, potentially increasing demands on the fund. On January 28, 2003, IAT Communications d.b.a. Clear Talk filed for eligible CETC status with the Idaho Public Utilities Commission in six Idaho service areas.[10] This request was followed by a Nextel Partners application for eligibility for five study areas and so called "conditional designation" in another carrier's territory upon redefinition of the service area.[11] Three of these study areas are the same for the two applicants. Thus, the Idaho Commission faces critical decisions concerning whether to designate three providers in three study areas and two providers in the other study areas. And, it is probable that additional filings by other wireless providers may be forthcoming. ITA shares the concerns of Commissioner Martin when he stated:

---

[8] *Notice* at para. 11.
[9] See OPASTCO written *ex parte* filed in CC Docket No. 96-45 on January 28, 2003.
[10] Before the Idaho Public Utilities Commission, In the Matter of IAT Communications, Inc., d.b.a. Clear Talk, Petition for Designation as an Eligible Telecommunications Carrier, January 28, 2003.
[11] Before the Idaho Public Utilities Commission, In the Matter of the Application of NPCR, INC. d/b/a NEXTEL PARTNERS Seeking Designation as an Eligible Telecommunications Carrier that may receive Federal Universal Service Support, Application of Nextel Partners, April 28, 2003.

> I also note that I have some concerns with the Commission policy…of using universal support as a means of creating "competition" in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive even for one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all customers in a rural area, leading to inefficient or stranded investment and a ballooning universal service fund.[12]

The Joint Board's Notice questions if there is line growth in high cost areas and how much of the growth is due to wireline, wireless, and other technology platforms. The Idaho companies are only in a position to answer the question from the wireline perspective and do not have access to data that addresses the question in the context of wireless or other platforms for their specific serving areas. The table below summarizes combined access lines for the twelve study areas for the past three years.

| | 2000 | 2001 | 2002 |
|---|---|---|---|
| Residential | 30,582 | 30,472 | 30,373 |
| Business – Single Line | 4,715 | 5,040 | 4,537 |
| Business – Multi-Line | 3,745 | 3,631 | 3,991 |
| Special Access | 576 | 604 | 591 |
| Total Access Lines | 39,618 | 39,747 | 39,492 |

As the above data indicates, the access line growth of the ITA members has been essentially flat. This is not surprising given the economy in this area of the country, with continuing small business closures, and population declines. While discussions with ITA members indicate there is anecdotal evidence that a few customers may have "cut the cord", the companies are not experiencing major access line losses to CMRS providers. ITA believes that a reasonable forecast for future line growth in these rural areas would range from flat to declining by 1 to 2 percent per year.

[12] *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 01-304, rel. November 18, 2001, separate statement of Commissioner Kevin J. Martin.

The story is different when examining interstate access minutes of use. For the combined study areas, interstate access minutes of use increased three percent from 2000 to 2001, and were essentially flat from 2001 to 2002. However, when the data is disaggregated to the study area level, the majority of ITA members experienced interstate access usage declines in the four percent to eight percent range. This loss in usage was offset by access minute growth of the other carriers yielding overall flat growth for 2002. There are some customers who are not designating a primary carrier for long distance service, indicating their intention to use their wireless provider for this function.

In the Notice the Joint Board questions whether wireless service is a complement to or substitute for wireline service.[13] Based on the foregoing rural Idaho specific information, ITA believes that wireless service is complementary to wireline service with respect to basic local service, but that customers are substituting wireless service for their long distance calling. This understandably reflects the regional and national "buckets of minutes", free night and weekend calling, and other features being offered by the CMRS providers. Dr. William R. Gillis in recent testimony before the Senate Subcommittee supports this view:

> ..I would observe mobile wireless and traditional telecommunications are not for the most part competing services and have been inappropriately characterized as such. With the exception of those cases where mobile wireless has resulted in the ability of customers to eliminate their traditional telecommunications connections, we are discussing complementary services, both desired by consumers for different reasons[14].

[13] *Notice* at para. 14
[14] Testimony of Dr. William R. Gillis, Director, Center to the Bridge to the Digital Divide, Washington State University, before the Communications Subcommittee of the Senate Committee on Commerce, Science, and Transportation, April 2, 2003.

As the data indicates, rural Idaho customers are not substituting their wireline phones for wireless phones to any major extent. Rather, as observed by Dr. Gillis, they value both services for different reasons. With respect to wireline service, customers place importance on reliability, quality of service, public safety, and the ability to receive service regardless of where they live in the ILEC's service territory, i.e., carrier of last resort obligations (COLR). Wireless service offers the customer a different value proposition; namely mobility, nationwide calling, different ringing tones, and differentiated phones, among other factors. ITA believes this trend raises a compelling public interest question: In light of the equal access obligations of the incumbent ILECs, how much scarce federal universal service funds does the Commission want to devote to providing more long distance competition in rural areas?

The Joint Board also requested comments on the methodology of calculating support for competitive ETCs and the related reporting requirements if support were based on their own costs, rather than those of the incumbent.[15] ITA believes that funding for all ETCs should be based on their own specific, supportable, historic costs. Wireline and wireless carriers have fundamentally different cost structures. Wireline providers utilize significant switching and distribution facilities to provide service, while wireless carriers' networks consist of towers and radio equipment. The competitive ETCs costs need to be known to make an informed decision that balances the benefits of ETC funding with the costs of that funding. Also, without knowing these costs it is impossible to judge the competitive impacts; competitive ETCs may be over or under recovering their costs. This information is obtainable but not currently known.

[15] *Notice* at para. 18

Tens of millions of dollars of federal USF funding currently flows to competitive ETCs.[16] Furthermore, the level of funding is predicted to grow exponentially in the future, absent changes in the rules. Because of the magnitude of these amounts and the fact that federal USF is a scarce national resource, ITA strongly believes that there should be accountability by competitive ETCs. This reporting should demonstrate that the universal service funds received by the CETCs have been used for purposes consistent with section 214(e) of the Telecommunications Act of 1996 and are not just considered upside to the bottom line of the wireless providers.[17] We believe that as a matter of law and the public interest, the allocation of finite public resources demands this accountability. If competitive ETCs do not want to provide and support their costs and be held accountable for the use of publicly provided funds, they would have the option of not seeking support.

ITA does not believe it is feasible or in the public interest to base support on the lowest cost provider's costs as discussed in the Notice.[18] Not all carriers provide the quality and reliability of service that is vital to customers for their public health and safety. Additionally, not all wireless carriers provide coverage throughout the wireline carrier's service area. Finally, only one carrier, the incumbent ILEC, bears the costs and obligations of COLR, which results in a comparatively higher cost structure. For the foregoing reasons, we do not believe this proposal is appropriate or competitively neutral.

## III. **Scope of Support**

---

[16] Annualizing USAC data for 2Q03, Report HC01 produces payments of $147 million to competitive ETCs in 2003.
[17] *Notice,* at Footnote 43 referencing the Solomon Smith Barney that indicates that universal service funding is an additional revenue source that is "almost all margin".
[18] *Notice* at para. 19

The Public Notice questions whether section 254 of the Act would be better served if support were limited to a single connection to the residential and single line business users, whether these lines are provided by the incumbent ILEC or the competitive ETC. ITA does not believe it is appropriate or practical to limit support based on primary and secondary lines. Customers maintain more than one line for a variety of reasons including telecommuting, Internet access, and fax. To these customers both lines are important to their everyday lives. Furthermore, these services are readily available in urban markets. Most importantly, capital investment decisions of the rural ILECs are made at the network level, not the line level. And, funding is necessary to support total network costs, not individual lines of a customer. Restricting support to a single connection, whether by the wireline or CMRS provider, raises compelling questions concerning the ILECs ability to continue to invest in the network, maintain quality service at affordable rates, and fulfill their carrier of last resort obligations. Furthermore, the loss of support for multi-line small rural businesses could place those businesses at a competitive disadvantage *vis a* vis their urban counterparts. In summary we believe restricting support would be bad public policy and inconsistent with the Act.

**IV. Process for Designating ETCs**

The Joint Board's Public Notice seeks comments on the system for designating ETCs and what factors should be considered in making these public interest determinations pursuant to sections 214 (e)(2) and 214 (e) (6) of the Act.[19] ITA believes that a well-reasoned and diligent evaluation of the public interest standard when deciding on a CETC application for eligibility would meaningfully examine whether additional

[19] *Notice* at para. 33.

public funding will achieve a commensurate level of public benefits for rural customers.

In this regard, FCC Commissioner Jonathan Adelstein has recently commented:

> I'm encouraging state commissions to carefully consider the public interest when making eligibility determinations, as is required by the Act. Specifically, states must make sure that the new market entrants receiving universal service meet all the obligations required by the Act. These include providing service throughout the service area and advertising its availability. They also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service. Another consideration is the effect it will have on the cost of providing service. As the fund grows, so does the level of contribution. We must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for consumers.[20](emphasis added)

When evaluating the costs of granting CETC status to an applicant, the state commission or FCC, in those situations where the state lacks jurisdiction, should review not only the additional costs imposed on the federal universal service fund, but also any state universal service fund impacts as well. This multi-jurisdictional view is especially relevant in Idaho where the state has, since 1988, administered a state universal service fund "for the purpose of maintaining the universal availability of local exchange service at reasonable rates and to promote the availability of message telecommunications service (MTS) at reasonably comparable prices throughout the state of Idaho"[21]

In addition to the federal and state impacts on universal service funds, regulatory authorities should consider the strong probability that additional CMRS providers will also seek eligibility status. They will be compelled to do this to remain competitive. In some study areas in Idaho, this could potentially result in up to 11 publicly funded

[20] Remarks of Commissioner Jonathan Adelstein before the National Telephone Cooperative Associations, February 3, 2003.
[21] *Idaho Code* § 62-610(1).

networks in a single study area if the incumbent ILEC and 10 wireless carriers were all granted eligible status.

The evaluation of the benefits to consumers of granting eligibility to additional ETCs should, at a minimum, consider the following factors: effect on prices, introduction of new or improved service over and above those currently available, improvements in service quality, specific plans to increase coverage to provide service to the entire study area, willingness and ability to assume carrier of last resort obligations, and the overall commitment and capability of the applicants to do what they say they are going to do and that they are not merely pursuing this course of action for short term financial gain. Once a competitive ETC is designated as eligible for public funds, accountability standards and reporting responsibilities need to be put in place. This would be over and above the current annual certification process. This reporting would encompass monitoring service level quality, customer complaints, pricing, and financial reporting to ensure that the funds have been used for their intended purposes. Concurrently, ILECs should be simultaneously allowed the same pricing flexibility as the competitive ETC including the ability to deaverage rates in those situations where the competitive ETC does not serve the entire study area. This flexibility is needed to promote regulatory parity and ensure competitive neutrality.

The Joint Board asks whether it is advisable to establish permissive federal guidelines for states to use in designating ETCs under section 214(e)(2) and what should be included in such guidelines.[22] The Joint Board also asks that the impact of the Fifth Circuit's decision regarding the Commission's ability to prohibit states from imposing additional eligibility criteria on ETCs be addressed.

In this case, the Court reversed the portion of the FCC's Order prohibiting states from imposing any additional requirements when designating eligible ETCs.[23] Taking the Court's decision into consideration in conjunction with sections 214(e)(2) and 214(e)(6), the ITA does not believe it is appropriate to establish federal guidelines. While consistency in eligibility decisions across multiple jurisdictions may be a laudable goal, the ITA's opinion is that the relevant state jurisdiction is in the best position to make public interest determinations taking into consideration the facts and circumstances relevant to the particular state.

## V. Conclusion

ITA members' customers have enjoyed a wide choice of wireless service offerings for many years without high cost support being provided to CMRS providers. These wireless offerings have not significantly affected access line growth in rural Idaho, but are resulting in reductions in interstate access minutes. Since wireless service is complementary to wireline service for basic local service and is a substitute for long distance service, regulatory authorities face a compelling public interest determination in deciding how much public funding is made available to support more long distance competition in rural areas. The ITA believes that funding should be at the network level and not at the "primary line" level. Supporting network costs is consistent with the service obligations of the ILECs and their capital investment decisions. The state jurisdictions are legally authorized to make public interest determinations regarding eligibility for USF funding and federal guidelines should not be necessary. To the extent public funding is deemed appropriate, that funding should reflect the varying levels of service quality, coverage, and specific, supportable costs of the CETC. The public interest and regulatory parity demands that these recipients be held to the same regulatory standards as the incumbent ILECS and accountable for the use of any funds received to ensure consistency with section 214(e) of the Act.

---

[22] 47 U.S.C. § 214(e).
[23] *Texas Office of Public Utility Counsel v. FCC,* 183 F.3d 393, 418 (5th Cir. 1999).

Respectfully submitted,
**Idaho Telephone Association**

Conley Ward
Their Attorney

Givens Pursley, LLP
P.O. Box 2720
Boise, Idaho 83701-2730
(208) 388-1200
May 5, 2003